IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 194 OF 2007

IN

WRIT PETITION NO. 6861 OF 2006

K. H. Sathale.... ... Appellant.
Versus
M/s. Philips India Ltd... .... Respondent.

Smt.Seema Sarnaik for the Appellant.
Mr.Sarosh Bharucha i/by M/s.Daftary Pereira & Diwan for the Respondent.

CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

DATED : 3RD OCTOBER, 2007.

P.C.:

The present appeal is directed against the order dated 10th July, 2007 passed by the learned single Judge in Civil Writ Petition No. 6861 of 2006.

2. The appellant, who was a workman, was served with the show cause-cum-charge-sheet related to the theft of certain articles when the appellant was subjected to a surprise check by the concerned authority. Regular enquiry was held, in which, admittedly, the appellant participated and the Enquiry Officer ultimately submitted the report wherein the appellant was found guilty of the article of charge and was consequently dismissed from service. This was

questioned before the Labour Court, which made its award dated 15th May, 2006 holding that the enquiry was fair, proper and the findings recorded by the Enquiry Officer were based upon the evidence. As such the Labour Court declined to set aside either the enquiry or the punishment relating to dismissal from service. Learned single Judge while entertaining the writ petition against the award of the Labour Court dated 15th May, 2006 held as under:

> "Ms. Sarnaik, learned advocate appearing for the petitioner contended that there was no police complaint lodged by the respondent regarding the missing articles. She submits that a duplicate key to the locker used to remain with the respondent and, therefore, anybody could have had access to the petitioner’s locker. She also submits that the articles found in the petitioner’s locker were not those with which he was concerned as was not employed on the same belt where these articles were manufactured. These submissions cannot be accepted since there is no evidence that there was any previous discord between the petitioner and the respondent or that the respondent had any animus against the petitioner. There is no allegation of victimization either.

> As rightly submitted by Mr. Bharucha, learned counsel for the respondent, that the Enquiry Officer and the Labour Court have both held on the basis of the evidence recorded at the enquiry that the misconduct is proved. No interference is called for since there is no error apparent on the face of the record.
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> Writ petition rejected."

3. While challenging the above judgment of the learned single Judge, contention raised before us is that on true appreciation of evidence the appellant cannot be held to be guilty of theft as the articles of charges were not proved against the appellant. Secondly, it is argued that the punishment of dismissal from service is disproportionate to the gravity of article of charges levelled against the appellant.

4. We find that both these contentions are without any merits. Once the enquiry is held to be fair and proper by the Labour Court coupled with the findings based upon the correct appreciation of evidence, there is hardly any scope for this Court to reappreciate any evidence that to in Letters Patent Appeal. These are findings of fact which even from the record before us

appear to be based upon correct appreciation of evidence. Merely because another view could be taken on the same fact, would be no ground for the court to interfere in the present appeal.

5. Once the appellant was found guilty of the charge of theft, the punishment of dismissal from service can neither be termed as disproportionate nor inappropriate. Any treatment of punishment primarily falls in the domain of the Disciplinary Authority. In the present case, even the Labour Court has duly examined the matter and found that no error existed on facts and law in the order passed by the Enquiry Officer.

6. In view of the above, we find no merits in the L.P.A. and the same is, accordingly, dismissed. No order as to costs.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.